(20)

A.F.R.

HIGH COURT OF CHHATTISGARH: BILASPUR

SINGLE BENCH : HON'BLE SHRI JAGDISH BHALLA, Ag. CJ

W.P. (L) No.4632 of 2007

PETITIONER Anusuiya Mesharam
D/o Jethuram Mesharam, Aged about 40 years, R/o Basantpur, Near Sahu Kirana Store, Ranjandgaon District Rajnandgaon (C.G.)

VERSUS

RESPONDENTS
1. Presiding Officer
Labour Court, Rajnandgaon (C.G.)
2. Commissioner
Nagar Palik Nigam Rajnandgaon (C.G.)

Writ Petition under Article 227 of the Constitution of India.

Present: Shri Anup Majumdar, counsel for the petitioner.

ORAL ORDER
(Passed on 06th August, 2007)

This petition is directed against the order dated 15-05-2007passed by the Labour Court. Petitioner had indicated in paragraph 6.2 of her petition that she was working in the Municipal Corporation, Rajnandgaon between 1987 and 1994 on the basis of stop gap arrangement and pleaded in paragraph 5.5 that she had worked in Municipal Corporation from May 1987 to September 1987 in Typing Department and thereafter from 13th November 1987 to 12th February 1988 in Water Resources Department. According to the petitioner, she had worked for more than 240 days continuously in one calendar year and therefore she had right to be reinstated and further claims the same status to be maintained as on the date of terminated from services without any notice or compensation on 18-12-1994.

In the year 2005 after a long gap of 9 years of her engagement as stop gap arrangement, petitioner approached the Labour Court for challenging the order of termination of the year 1994. During the argument, learned counsel for the petitioner submitted that it was not stop gap arrangement but she was working

as daily wager. Both the arguments of the petitioner would be consider by this Court in background of the stands taken by the petitioner before the Labour Court and before this Court. When the petitioner approached before the Labour Court after a gap of 9 years, she could not substantiate and explain the delay and laches. I further found that the petitioner even could not substantiate that she had worked for 240 days in one calendar year. According to the petitioner her witness had said that she worked for 240 days; no details have been placed by the petitioner, neither before the Labour Court nor before this Court. Even there is no whisper in this petition explaining the delay of 9 years and also that the petitioner had worked out for 240 days in one calendar year. The only detail which has been furnished in this petition is that the petitioner had worked from May 1987 to September 1987 and from 13th November 1987 to 12th February 1988. Further it has been indicated that the petitioner had worked in the Corporation from May 1987 to September 1987 in Typing Department and thereafter from 13th November 1987 to 12th February 1988 in another department i.e. Water Resources Department. Besides this, petitioner has failed to indicate anywhere in her petition that in which department she had completed 240 days. As far as the grounds are concerned petitioner's stand is that she was working in the stop gap arrangement from the year 1987 to 1994. Petitioner was expected to explain the delay as well as her working for 240 days as daily wager which she failed to substantiate. No argument has been advanced as far as delay is concerned. The only argument before this Court is that she has completed 240 days in a calendar year which was supported by the evidence of Suresh Kumar Meshram and further in support of argument, petitioner relied upon **Gangadhar Pillai** Vs. **Siemens Ltd. (2007) 1 SCC 533**. In the said case it is held that only because whether an employee has been

engaged as a casual or temporary employee or that he had been employed for a number of years, the same by itself may not lead to the conclusion that such appointment had been made with the object of depriving him of the status and privilege of a permanent employee.

It has been further held that it is not the law that on completion of 240 days of continuous service in a year, the employee concerned becomes entitled to regularization of his services and / or permanent status. The concept of 240 days in a year was introduced in the industrial law for a definite purpose. Accordingly, the judgment is not given any protection in this case.

At this stage counsel for the petitioner submitted that there is no limitation for approaching the Labour Court under the Industrial Dispute Act. In spite of the same, learned counsel for the petitioner failed miserably to explain the delay and laches.

Accordingly, I am of the considered opinion that there is 9 years delay in approaching before the Labour Court are to be explained as held in **Express Publications (Madurai) Ltd. and Another Vs. Union of India and Another, (2004) 11 SCC 526**

> "26. We may also notice the aspect of long delay in laying challenge to the validity of the impugned provisions. No hard-and-fast principle can be laid down that under no circumstances delay would be a relevant consideration in judging constitutional validity of a provision. It has to be remembered that the constitutional remedy under Article 32 is discretionary. In one case, this Court may decline discretionary relief if the person aggrieved has slept over for a long number of years. In another case, depending upon the nature of violation, the Court may ignore delay and pronounce upon the invalidity of a provision. It will depend from case to case. In *Rabindranath Bose Vs. Union of India (1970) 1 SCC 84 : (1970) 2 SCR 697* the extreme proposition that this Court has no discretion and cannot dismiss a petition under Article 32 on the ground that it has been brought after inordinate delay, was

not accepted by the Constitution Bench. The plea to reconsider law laid down in *Tilokchand Motichand* Vs. *H.B. Munshi (1969) 1 SCC 110* did not succeed. It was held that : (SCC pp 96-97, para 32)

"But after carefully considering the matter, we are of the view that no relief should be given to petitioners who, without any reasonable explanation, approach this Court under Article 32 of the Constitution after inordinate delay. The highest court in this land has been given original jurisdiction to entertain petitions under Article 32 of the Constitution. It could not have been the intention that this Court would go into stale demands after a lapse of years. It is said that Article 32 is itself a guaranteed right. So it is, but it does not follow from this that it was the intention of the Constitution-makers that this Court should discard all principles and grant relief in petitions filed after inordinate delay."

Hon'ble Apex Court further relied upon in the case of **Assistant Executive Engineer, Karnataka Vs. Shivalinga (2002) 10 SCC 167** in para 6, which reads as under:-

"Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in *Ajaib Singh* V. *Sirhind Coop. Marketing-cum-Processing Service Society Ltd.(1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : 1999 AIR SCW 1051* and *Sapan Kumar Pandit v. U.P. SED (2001) 6 SCC 222 : 2001 SCC (L&S) 946* to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute as to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of

the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand. Proceeding on the facts of the case we think the High Court is wrong in having interfered with the award made by the Tribunal. The order made by the High Court in the writ proceedings, therefore, shall stand set aside and the award made by the Labour Court shall stand restored. The appeal is allowed accordingly".

After hearing the parties and considering the view taken by the Apex Court in the aforesaid matters, I am of the considered opinion that the petitioner has failed to reasonably explain delay of nine years and laches in approaching the Labour Court. The petitioner cannot ask for condoning the delay of nine years as a matter of right. In Express Publication (Madurai) Ltd. and Another Vs. Union of India and Another (supra), the Apex Court has dealt with the matter of delay and laches in a detailed manner and this Court has also examined the submissions of learned counsel for the petitioner.

In the light of aforesaid discussion, I am of the considered opinion that the petitioner has failed to offer the reasonable explanation for the delay and laches. Accordingly, no interference is warranted from this Court and the petition is, therefore, dismissed.

With these observations, the writ petition is dismissed.

Sd/-
Acting Chief Justice

Kamde